

ORDINANCE 11 OF 2024

**AN ORDINANCE OF AVOCA BOROUGH, LUZERNE COUNTY,  
RELATING TO THE CREATION OF A CODE ENFORCEMENT APPEALS BOARD**

**WHEREAS**, in the interest of the health, safety and welfare of the citizens and residents of the Borough of Avoca, the Borough Council wishes to create and establish a Code Enforcement Appeals Board.

**NOW THEREFORE**, be it ordained as follows:

**SECTION 1 – TITLE**

This Ordinance shall be known as the Avoca Borough Code Enforcement Appeals Board Ordinance.

**SECTION 2 – CREATION & PURPOSE**

A Code Enforcement Appeals Board ("Board") is hereby established for the purpose of hearing and ruling upon appeals from any order, requirement, decision or determination of the Borough of Avoca's authorized Code Enforcement Officer rendered in the administration of the Borough of Avoca's ordinances, codes and regulations, including but not limited to the Uniform Construction Code and Property Maintenance Code.

**SECTION 3 – MEMBERSHIP & QUALIFICATIONS**

The Board shall consist of three members, all of whom shall be selected and appointed by the Borough of Avoca Council to serve in such position. The Borough of Avoca Council shall appoint two alternate members who may be called by the Board Chairperson to hear appeals in the absence of disqualification of any member. All references to the Board shall also be deemed to refer to the Board alternate members unless context requires otherwise.

The Board shall annually select one of its members to serve as Chairperson, one of its members to serve as Vice Chairperson, and one of its members to serve as Secretary. Borough Council shall make reasonable efforts to evaluate the credentials of candidates and will appoint only those individuals who are qualified by training and experience to pass on matters pertaining to building construction. Training and experience may consist of licensure as an architect or engineer, experience in construction industry, and training or experience as an inspector or plan reviewer.

**SECTION 4 – TERMS; VACANCIES; REMOVAL; COMPENSATION**

The initial term of all members of the Board shall begin with their appointment and end as follows: one member for the first four years; one member for three years; and one member for two years. Thereafter, the terms of office for members of the Board shall be five years.

Vacancies on the Board, resulting from the conclusion of a term of membership or resignation, death or removal of a member, shall be filled by the appointment and selection of a new member by the Borough Council. Members and alternatives of the Board may be reappointed. Alternate members of the Board shall be appointed for terms of five years or until a successor has been appointed.

Any member of the Board may be removed from office by a majority vote of the entire Borough Council for failure to perform the duties of such office.

Members of the Board shall serve as such without compensation.

#### **SECTION 5 – QUORUMS; CONDUCT OF HEARING; CONFLICTS**

A quorum of the Board shall exist when at least two members of the Board are present. Such a quorum shall consist of regular and alternate members.

The Board shall conduct all public hearings and administrative business, and all votes, at advertised public meetings, in accordance with the Sunshine Law of the Commonwealth of Pennsylvania, as amended from time to time, except the deliberations for the purpose of considering an appeal, including the receipt of the advice of the solicitor for the Board (should a solicitor be appointed), may occur in executive session.

No member of the Board shall participate in any hearing or vote on any matter on which that member has a direct or indirect personal or financial interest, or is engaged as a contractor, subcontractor or professional consultant on the subject matter of the case at hand or is engaged in the preparation of plans and specifications, on the subject matter of the case at hand.

#### **SECTION 6 – VOTING; ACTIONS; MEETING ADHERENCE; PUBLISHING**

The actions of the Board shall be determined by the vote or other affirmative expression of a majority of its members present at the time of the vote.

All actions of the Board shall be certified by the Chairperson or, in the Chairperson's absence, the Vice Chairperson and attested to by its Secretary.

The Board shall meet on an as-needed basis at the determination of the Chairperson, and at all other times as the Board may determine.

#### **Section 7 – Jurisdiction & Authority**

The Board shall have authority and jurisdiction to hear and rule on orders of the Code Enforcement Officer or other Borough officer involved in the administration and enforcement of Codes, including, but not limited to, the granting or denial of any permit, or the failure to act on the application therefor, the issuance of any cease-and-desist order, or the issuance of an official enforcement notice or order.

#### **SECTION 8 – APPEAL PROCEDURE**

Any appeal from the provisions of any code over which the Board has jurisdiction shall be registered by the aggrieved party by filing with the Code Enforcement Officer whose

determination is being appealed and with the Board, a notice of appeal specifying the grounds upon which the appeal is based. The Code Enforcement Officer with whom the appeal is filed shall forthwith transmit to the Board all documentary material constituting the record upon which the action appealed was taken.

Any person, firm, corporation, or agency may register an appeal for the review of any decision of any authorized Code Enforcement Officer of the Borough of Avoca; provided, that such appeal is made in writing within thirty (30) days after notice of the decision was issued. Any such official notification shall set forth the basis for the appeal and shall specifically identify any provisions which are applicable to the appeal.

Upon receipt of an appeal, the Board shall conduct a public hearing within a reasonable period of time, not to exceed 45 days, to consider the merits of the appeal.

The appellant or applicant and all other parties having an interest may be heard. The parties to the hearing shall be the Borough, any person affected by the application or appeal who has made a timely appearance of record before the Board. The Board shall have the power to require that all persons who wish to be considered as parties enter appearances in writing on forms provided by the Board for that purpose. The parties shall have the right to be represented by counsel and shall be afforded the opportunity to respond and present evidence and argument and to cross-examine adverse witnesses on all relevant issues. The Board shall not be bound by the formal rules of evidence, but irrelevant, immaterial, or unduly repetitious evidence may be excluded by the Board.

Within forty-five (45) days after the conclusion of the public hearing concerning an appeal, the Board shall advise the applicant and all parties appearing in the appeal, in writing by certified first-class United States mail, postage prepaid, of its decision, and a copy of said decision shall be filed with the Secretary for the Borough of Avoca. Such written decision shall set forth the evidentiary and legal findings of the Board and shall contain an order entirely disposing of the appeal in question. The decisions and orders of the Board shall be in accordance with all applicable codes, ordinances and regulations of the Borough, as well as all statutes, laws, judicial decisions and regulations of the Commonwealth of Pennsylvania and the United States of America.

#### **SECTION 9 – COURT REVIEW**

Any person, firm, corporation or agency aggrieved by any decision of the Board may appeal such order, decision, or adjudication to the Court of Common Pleas consistent with the laws of the Commonwealth of Pennsylvania governing appeals of orders, decisions, and adjudications of a local agency.

No action on any case under appeal shall be taken by any Code Enforcement Officer, except as directed by the Board, until a decision is rendered by the Board.

#### **SECTION 10 – EMERGENCIES; CITATIONS; ENFORCEMENT**

Whenever the Code Enforcement Officer determines that an emergency condition exists which requires immediate action to protect the health and/or safety, the Code

Enforcement Officer may, if authorized by applicable Borough Code, issue an order declaring the existence of such emergency and requiring action to be taken (or requiring that persons refrain from taking certain actions) to remedy such emergency. Such emergency order shall be effective immediately upon issuance. Any person to whom such order is directed shall comply therewith immediately. Said person may file an appeal or request for modification to the Board regarding such order, but such appeal or request shall not serve as a supersedeas to the Code Enforcement Officer's emergency order.

Nothing contained herein shall be deemed to alter or affect the power and authority of the Code Enforcement Officer or other enforcement authority to issue or file summary citations and to prosecute summary citations and/or to file and pursue civil proceedings, whether at law and/or in equity, before a District Justice, the Court of Common Pleas, and/or other permitted authority, including the abatement of such violations; provided, however, that summary citations may be issued or filed and prosecuted during the pendency of proceedings before the Board.

The Code Enforcement Officer and the Appellant shall take prompt action in accordance with the final decisions and orders of the Board, from which no appeal has been or may properly be filed.

#### **SECTION 11 – ADOPTION OF REGULATIONS; FEES**

The Avoca Borough Council may from time to time, by resolution, adopt regulations to provide for the forms and procedures to be utilized in the filing and processing of appeals before the Board.

The Borough Council shall prescribe reasonable fees with respect to the hearings conducted before the Board. The Fee shall be payable by the Appellant bringing the appeal. Fees for said hearings may include compensation for notice and advertising costs, appearance fee for a stenographer, and any necessary administrative overhead costs connected with the hearing.

The cost of the original hearing transcript shall be paid by the Board if the transcript is ordered by the Board or shall be paid by the person appealing from the decision of the Board if such appeal is made, and in any event the cost of additional copies shall be paid by the person requesting such copy or copies. In other cases, the party requesting the original transcript shall be responsible for the cost thereof.

#### **SECTION 12 – REPEALER**

Any past ordinance, or part or parts thereof, conflicting with any part or parts of this Ordinance are hereby repealed to the extent that they are inconsistent herewith. In all other respects, the ordinances of the Borough of Avoca shall remain as previously enacted and ordained.

#### **SECTION 13 – SEVERABILITY**

The provisions of this Ordinance are severable. If any Section, sentence, clause, phrase of this Ordinance shall be held illegal, invalid, unconstitutional by any court of competent

jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Ordinance.

It is hereby declared as the intent of the Borough that this Ordinance would have been adopted had such invalid or unconstitutional section, sentence, clause or phrase not been included. Furthermore, it is the intent of this Ordinance to be supplementary to, and not contrary to, any laws of the Commonwealth of Pennsylvania or regulations of any of its executive agencies.

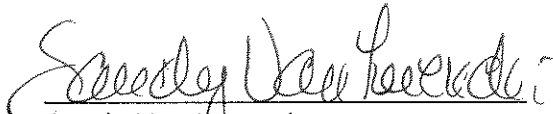
**SECTION 14 – EFFECTIVE DATE**

This Ordinance shall become effective immediately upon enactment as provided by law.

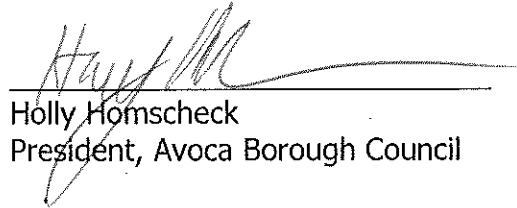
**PASSED and ENACTED** on this 10th day of October, 2024, at the regular meeting of the Avoca Borough Council.

ATTEST:

AVOCA BOROUGH COUNCIL

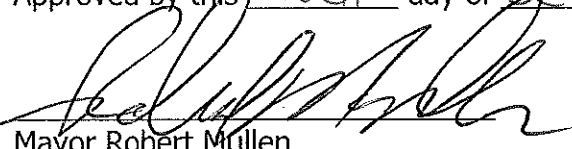


Sandy Van Luvender  
Borough Manager/Secretary



Holly Homscheck  
President, Avoca Borough Council

Approved by this 10th day of October, 2024.



Mayor Robert Mullen